U.S. Department of Labor Office of Administrative Law Judges
Washington, DC

IN THE MATTER OF :

ASSOCIATION OF FARMWORKER
OPPORTUNITIES PROGRAMS, CASE NOS: 84-JSA-2
Complainant 84-JSA-3
84-JSA-4

v.

EWERS ORCHARDS,
MOUNT LEVELS ORCHARDS, and
TRI-COUNTY GROWERS,
Respondents

DECISION AND ORDER

This proceeding arises under the Wagner-Peyser Act of 1933, 29 U.S.C. 449 et seq., a n d the regulations governing the Job Service System found at 20 CFR Part 658.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On August 26, 1981, the Association of Farmworker Opportunity Programs, Inc. ("AFOP") a private non-profit corporation organized to promote the interests of migrant and seasonal farmworkers, challenged the employment practice of Ewers Orchards, Mount Level Orchards and Tri-County Orchards under the Job Service Complaint System of the Job Service Training Act ("JSTA"). AFOP's complaints against the three orchards alleged that several employment violations had occurred in 1980 and 1981. Specifically, AFOP alleged that the employers failed to properly adjust the piece rate paid to their apple pickers in those years, and sought restitution. A West Virginia Administrative Law Judge, Gary L. Johnson, consolidated the cases and determined, in a decision issued on June 21, 1983, that employment violations had occurred. On August 3, 1984, the Regional Administrator of the Employment and Training Administration of the United States Department of Labor affirmed these findings. The respondents appealed this determination to the Office of Administrative Law Judges, contending that AFOP was without standing to maintain this challenge. Further. the respondents challenged the findings Administrator, contending that the piece adjusted. On January 3, 1985, a hearing was West Virginia. Since I hold that AFOP does bring this action, the remaining issues need o f the Regional rates were properly held in Martinsburg, not have standing to not be addressed.

The Position of the Parties

The respondents contend that a complaint under 20 C.F.R. §658.401 must refer to a particular applicant. §658.401 states that:

> (a)(l) The types of complaints (JS related complaints) which be handled to resolution by the JS complaint system are as follows : (i) Complaints against an employer about the specific job to which the applicant was referred by the JS involving violations of the terms and conditions of the job order or employment-related law (employer-related complaint) and (ii) complaints about Job Service actions or omissions under JS regulations (agency-related complaints).
> [Emphasis added].

The complaints in these cases are all complaints against employers (see ALJX 1, at J; ALJX 2, at K; ALJX 3, at G), and thus arise under §658.401(a)(l)(i).

Definitions of the terms used in Part 658 are found at 20 C.F.R. §651.10, which provides in pertinent part that:

> "Applicant " means a person who files an application for services with a local office of a State agency with outstationed staff or with an outreach worker. [Emphasis added].
>
> "Complaint" means a representation made or referred to a State or local JS office regulations and/or other employment related law.
>
> "Complainant means. the organization, association, complaint.

Respondents contend that AFOP is of a violation of the JS federal, State or local individual , employer, or other entity filing a neither Itself an applicant nor does it represent any individual who is an applicant (TR 132-36),[1] and thus has no standing to file complaints in these cases l

AFOP maintains that it has standing both under administrative law and Article III standards. AFOP has no individual members. Rather, it is composed of a group of organizations devoted to improving farmworker conditions. The Migrant and Seasonable Farmworkers Association (MSFA) is AFOP's West Virginia member. Although MSFA does have individual farmworkers who may be considered members of that organization (TR 128), AFOP can point no MSFA members who work or worked for the employers in question. AFOP contends that It has organizational standing to represent the aggrieved employees and standing in its own right as it claims that its organizational purposes have been injured because of the respondents' activities .

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[1]The abbreviation "TR"" will be used when citing to the transcript of the January 3, 1985 hearing in this case.

AFOP argues that the whole purpose of the regulations --i.e., to discover and remedy unlawful employment practices--compels a grant of standing when, as In these cases, such illegal activity has been discovered.

The issue for resolution is whether AFOP, because of its interest in the working conditions of farmworkers, has standing under the JSTA to maintain a challenge against these named employers, when AFOP has no individual members (and thus no aggrieved members) and knows of no members of its member organizations who worked for those employers, and when no aggrieved employees requested that AFOP serve as their representative in a proceeding against the employers named.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Administrative agencies are free to hear actions brought by parties who might be without standing if the same issues were before a federal court. Gardner v. FCC, 520 F.2d 1086, 1090-91 (D.C. Cir. 1976). However, analysis of administrative standing analysis must always begin with the language of the statute and regulations that provide for an administrative hearing. ECEE v. Federal Energy Regulatory Commission, 645 F.2d 339, 350 (5th Cir. 1981).

The regulations dealing with federal and state hearings under the JSTA, at 20 CFR §§658.417 and 658.424, are predicated upon the filing of a complaint. In order to meet the basic requirements of 20 CFR §658.401(a)(l)(i), which is applicable in this case, the complaint filed against an employer must concern a specific job to which an applicant was referred by the Job Service.

AFOP has made no representation of such a specific instance. At the administrative hearing, AFOP's executive director was unable to name even one individual associated with AFOP or the MSFA who ever applied for work with any of the named employers (TR 138, 142-43). Further, AFOP has not contended that any of the alleged aggrieved employees requested It to represent them (TR 139-40). While there is some evidence that MSFA counsels and encourages individual farmworkers to apply for jobs in West Virginia, there is no indication that this counseling was even remotely connected to these respondents or to the complaint allegations involving these respondents.

AFOP correctly interprets the regulations in alleging that an organization may file a complaint on the behalf of an individual. However, while there has been a state determination that employment violations did occur, the record is barren of any allegation that AFOP is in any way connected with the Individuals who were harmed. The plain language of the regulations, in particular §658.401(a)(l)(i), demands that a complaint be more narrowly focused. At a minimum, I find that §658.401(a)(l)(i) requires that an individual applicant be named in order that a complaint be processed through the JS system. AFOP has not named and apparently cannot name such an individual.

AFOP contends in the alternative that they have group standing to challenge these employers actions and that they have standing as private attorneys-general to insure that the goal

of the statute is met . However it is phrased, the AFOP must demonstrate that, as a result of the employers' actions, It has suffered"a distinct and palpable injury." Havens Realty v. Coleman, 455 U.S. 363 (1982). I find that AFOP has failed to meet this requirement.

AFOP has cited several cases in support of its proposition that AFOP should be granted organizational standing, but I find those cases to be inapposite. The distinguishing feature that separates AFOP from the organizations in the cases it cites is that AFOP has asserted no direct injury from the actions it protests.

In Haven Realty v. Coleman, 455 U.S. 363 (1982), HOME, an organization devoted to providing counseling and services to facilitate open housing practices, alleged that certain practices perceptibly impaired HOME's ability to provide those services. As a result, the court found that HOME's organizational resources were drained in identifying and counteracting those practices. The Court found that HOME's establishment of a concrete and demonstrable injury to organizational activities, coupled with HOME's significant drain on organizational resources, constituted more than a set back to the organization's abstract social interests. 455 U.S. at 379. I find that AFOP, unlike HOME, has failed to show that the activities of the respondents in question had any appreciable effect on AFOP. Similarly, in Granville v. Department of Health and Human Services, 715 F.2d 1292 (8th Cir. 1983), the Court found that an organization devoted to serving the poor had standing to challenge HHS's denial of its Medicaid funding. It found that organizational purposes were frustrated by this denial , creating an injury which provided standing for the organization. Again, the plaintiffs in that case were able to show a directness of injury which AFOP has not asserted.

AFOP has shown only abstract injury to its goal of serving the needs of the migrant and seasonal farmworker. It has in no way demonstrated a direct injury to that goal related to the employment practices challenged. It is in the position of a nominal party witness without a real interest of its own . Alfred L. Snapp v. Puerto Rico, 458 U.S .590, 600 (1982). Organizational interests have been held sufficient to establish standing in federal courts where particular associated interests were harmed by agency policies, but not where those policies did not directly impact upon the association. Sierra Club v. Morton, 405 U.S. 727 (1972).

AFOP also argues that the state essentially abdicated its proper role (i.e., bringing this complaint) to AFOP. A grant of standing to appear before a federal administrative body, however, should not be based upon abuses within the state system.

Under all of the theories advanced, AFOP falls short because of the lack of allegation of any direct injury to itself or to its members. As a result, the AFOP is essentially in the posture of merely advancing an "interesting problem" insufficient to allow standing. Sierra Club v. Morton, supra, at 739.

ORDER

For the foregoing reasons , I hereby ORDER that the Determination of the Regional Administrator is VACATED, and these cases are dismissed.

JEFFREY TURECK
Administrative Law Judge

Dated: 13 NOV 1985
Washington, D.C.
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